

State of South Dakota

SEVENTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 1998

822B0740

HOUSE BILL NO. 1238

Introduced by: Representative Gabriel

1 FOR AN ACT ENTITLED, An Act to establish a telecommunications gross receipts tax, to
2 provide for its distribution, and to repeal certain property taxes and certain gross receipts
3 taxes paid by certain telecommunications companies.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. Terms used in this Act mean:

6 (1) "Department," the South Dakota Department of Revenue;

7 (2) "Engaging in business," carrying on or causing to be carried on any activity with the
8 purpose of direct or indirect benefit;

9 (3) "Mobile service," as defined pursuant to 47 USC § 153 as of January 1, 1998;

10 (4) "Secretary," the secretary of the Department of Revenue;

11 (5) "Telecommunications company," any person as defined by § 2-14-2, trustee, lessee,
12 receiver, or municipality providing any telecommunications service;

13 (6) "Telecommunications gross receipts tax," the gross receipts tax imposed by this Act.

14 Section 2. The term, telecommunications service, as used in this Act, means the transmission
15 of signs, signals, writings, images, sounds, messages, data, or other information of any nature
16 for two-way communication by wire, radio, light waves, electromagnetic means, or other similar

1 means. The term does not include the provision of terminal equipment used to originate or
2 terminate such service. The term does include radio common carrier services, mobile services,
3 radio paging services, and two-way television services.

4 Section 3. The term, gross receipts, as used in this Act, means all revenue of a
5 telecommunications company from the sale at retail of intrastate telecommunications services.
6 Sale at retail does not include the sale of any telecommunications service by a
7 telecommunications company to another telecommunications company if the service is resold by
8 the second telecommunications company.

9 Section 4. There is hereby imposed a tax of four percent on the gross receipts of any
10 telecommunications company from the sale at retail of any telecommunications service.

11 Section 5. There is created in the state treasury the telecommunications gross receipts tax
12 fund. The secretary shall deposit any revenue collected from the tax imposed by section 4 of this
13 Act into this fund.

14 Section 6. The secretary shall make distributions from the telecommunications gross receipts
15 tax fund each March, June, September, and December to replace the distributions made to each
16 school district pursuant to chapter 10-33 prior to the repeal of that chapter by this Act. The
17 amount of the distribution to each school district pursuant to this section shall ensure that each
18 school district receives each calendar year as much as the school district received pursuant to
19 chapter 10-33 in calendar year 1996. The secretary shall approve vouchers and the state auditor
20 shall draw warrants to pay each school district its share of the distribution.

21 Section 7. The secretary shall make distributions from the telecommunications gross receipts
22 tax fund each March, June, September, and December to each county to replace any revenue
23 from property taxes levied pursuant to subdivision 10-33-17(2) prior to the repeal of that
24 subdivision by this Act. The amount of the distribution to each county pursuant to this section
25 shall ensure that each county receives each calendar year as much as the county received

1 pursuant to subdivision 10-33-17(2) in calendar year 1996. The secretary shall approve vouchers
2 and the state auditor shall draw warrants to pay each county its share of the distribution.

3 Section 8. The secretary shall make distributions from the telecommunications gross receipts
4 tax fund each March, June, September, and December to each school district which received
5 revenues from a municipal telephone system prior to the effective date of this Act. The amount
6 of the distribution to each such school district pursuant to this section shall ensure that each
7 school district receives as much as the school district received from a municipal telephone system
8 in calendar year 1996. A school district shall supply proof to the secretary of the amount
9 received in calendar year 1996 from a municipal telephone system before it may receive any
10 distributions pursuant to this section. The secretary shall approve vouchers and the state auditor
11 shall draw warrants to pay each school district its share of the distribution.

12 Section 9. Any property taxes levied pursuant to chapter 10-33 and payable for calendar year
13 1998 are due January 31, 1999. Any taxes imposed pursuant to chapter 10-33 and payable on
14 gross receipts for calendar year 1998 are due January 31, 1999.

15 Section 10. The secretary shall transfer any revenues remaining in the telecommunications
16 gross receipts tax fund, after the distributions required by this Act, to the property tax reduction
17 fund. Any revenue deposited in the property tax reduction fund pursuant to this Act shall be
18 dedicated to increasing the per student allocation established by § 13-13-10.1.

19 Section 11. Any telecommunications company engaging in a business in this state whose
20 gross receipts from telecommunications services are subject to the telecommunications gross
21 receipts tax shall file with the department, an application for a telecommunications gross receipts
22 tax license. An application for a license shall be made upon a form prescribed by the secretary
23 and shall set forth the name under which the applicant transacts or intends to transact business,
24 the location of the place of business, and such other information as the secretary may require.
25 The application shall be signed by the owner, if a natural person; in the case of an association or

1 partnership, by a member or partner thereof; or in the case of a corporation or a municipality,
2 by an executive officer thereof or some person specifically authorized by the corporation or the
3 municipality to sign the application, to which shall be attached the written evidence of the
4 person's authority.

5 Section 12. The secretary shall grant and issue to each applicant a telecommunications gross
6 receipts tax license. A license is not assignable and is valid only for the telecommunications
7 company to which it was issued. Any license issued is valid and effective without further payment
8 of fees until canceled or revoked.

9 Section 13. The secretary may refuse to issue a telecommunications gross receipts tax license
10 to any person who is delinquent in payment of other taxes levied by the State of South Dakota.
11 The secretary may also require an applicant to furnish to the state a bond, or other adequate
12 security, as security for payment of any gross receipts tax that may become due, or require a
13 bond or security as a condition precedent to remaining in business as a telecommunications
14 company.

15 Section 14. Any person who is the holder of a telecommunications gross receipts tax license
16 or is a telecommunications company whose receipts are subject to telecommunications gross
17 receipts tax in this state shall file a return and remit the tax on or before the twentieth day of the
18 month following each monthly period. If the telecommunications company files the return and
19 remits the tax by electronic transfer to the state, the telecommunications company shall file the
20 return and remit the tax on or before the last day of the month following each monthly period.

21 The secretary may grant an extension of not more than five days for filing a return and
22 remittance. Unless an extension is granted, penalty or interest under § 10-59-6 shall be paid if
23 a return or remittance is not made on time.

24 Section 15. Any telecommunications company that is the holder of a telecommunications
25 gross receipts tax license and that has failed to file a return, or that has filed a return and has

1 failed to pay the tax due the state under this law on or before the fifteenth of the second month
2 following the reporting period authorized, may no longer continue as a telecommunications
3 company and its telecommunications gross receipts tax license is hereby revoked and canceled.

4 Section 16. Any appeal from a decision of the secretary in a contested case shall be taken in
5 accordance with chapter 1-26.

6 Section 17. The secretary may not reinstate the license of a telecommunications company,
7 which has been canceled or revoked as provided in this Act, until all the telecommunications
8 gross receipts tax due the state and a ten dollar reinstatement fee has been paid. The secretary
9 may also require the telecommunications company to file a bond as security for any future
10 liability.

11 Section 18. Any refund or allowance made by any telecommunication service or any amount
12 written off the books of a telecommunications company reporting financial information on an
13 accrual basis may be reported as an uncollectible debt and deducted from the gross receipts of
14 any telecommunications service. If any uncollectible debt is subsequently collected, the amount
15 is subject to the telecommunications gross receipts tax and shall be reported to the department
16 in the month of collection.

17 Section 19. Any telecommunications company subject to the telecommunications gross
18 receipts tax shall keep records of all receipts and telecommunications service sales. The records
19 shall, at all times during business hours of the day, be subject to inspection by the department to
20 determine the amount of tax due. The records shall be preserved for a period of three years
21 unless the secretary, in writing, authorized their destruction or disposal at an earlier date.

22 Section 20. The secretary may promulgate rules pursuant to chapter 1-26 concerning:

- 23 (1) Telecommunications tax licensing, including bonding and filing license applications;
- 24 (2) The filing of returns and payment of the tax;
- 25 (3) Determining the application of the telecommunications tax and exemptions;

(4) Taxpayer record-keeping requirements;

(5) Determining auditing methods.

Section 21. Any person who:

(1) Makes any false or fraudulent return in attempting to defeat or evade the telecommunications gross receipts tax is guilty of a Class 6 felony;

(2) Fails to pay the telecommunications gross receipts tax due under this Act within thirty days from the date the tax becomes due is guilty of a Class 1 misdemeanor;

(3) Fails to keep the records required by this Act or refuses to exhibit these records to the department for the purpose of examination is guilty of a Class 1 misdemeanor;

(4) Fails to file a return required by this Act within thirty days from the date the return is due is guilty of a Class 1 misdemeanor;

(5) Engages in business as a telecommunications company under this Act without obtaining a telecommunications gross receipts tax license is guilty of a Class 1 misdemeanor;

(6) Engages in business as a telecommunications company under this Act after the company's telecommunications gross receipts tax license has been revoked or canceled by the secretary is guilty of a Class 6 felony;

(7) Willfully violates any rule of the secretary for the administration and enforcement of the provisions of this Act is guilty of a Class 1 misdemeanor;

(8) Violates either subdivision (2) or subdivision (4) two or more times in any twelve-month period is guilty of a Class 6 felony;

(9) Engages in business as a telecommunications company under this Act without obtaining a telecommunications gross receipts tax license after having been notified in writing by the secretary that the telecommunications company is subject to the provisions of this Act is guilty of a Class 6 felony. However, it is not a violation of

1 this subdivision if the telecommunications company providing any telecommunications
2 service files an application for a telecommunications gross receipts tax license and
3 meets all lawful prerequisites for obtaining such license within three days from receipt
4 of written notice from the secretary.

5 For purposes of this section, the term, telecommunications company, includes corporate
6 officers having control, supervision of or charged with the responsibility for making tax returns
7 or payments pursuant to this Act.

8 Section 22. If a corporation subject to the gross receipts tax under this Act fails for any
9 reason to file the required returns or to pay the tax due, any of its officers having control, or
10 supervision of, or charged with the responsibility for making such returns and payments are
11 personally liable for such failure. The dissolution of a corporation does not discharge an officer's
12 liability for a prior failure of the corporation to make a return or remit the tax due. The sum due
13 for such a liability may be assessed and collected as provided by law.

14 If the corporate officers elect not to be personally liable for the failure to file the required
15 returns or to pay the tax due, the corporation shall provide the department with a surety bond
16 or certificate of deposit as security for payment of any tax that may become due. The bond or
17 certificate of deposit provided for in this section shall be in an amount equal to the estimated
18 annual gross receipts multiplied by the applicable sales or gross receipts tax rate. This section
19 does not apply to elected or appointed officials of a municipality if they are bonded pursuant to
20 §§ 9-14-6 and 9-14-6.1.

21 Section 23. The tax imposed by this Act is in lieu of all personal and real property taxes
22 levied by the state, counties, municipalities, townships, school districts, or other political
23 subdivisions of the state on the portion of the personal and real property of the
24 telecommunications company which is used or intended for use in furnishing and providing
25 telecommunications service.

1 Section 24. That § 10-59-1 be amended to read as follows:

2 10-59-1. The provisions of this chapter apply to any taxes or fees or persons subject to taxes
3 or fees imposed by this Act, chapters 10-39, 10-39A, 10-39B, 10-43, 10-45, 10-46, 10-46A,
4 10-46B, 10-47B, 10-52, 10-60, 32-3, 32-5, 32-5B, 32-9, 32-10, and 34A-13 and §§ 22-25-48,
5 50-4-13 to 50-4-17, inclusive, and the provisions of chapter 10-45B.

6 Section 25. That §§ 10-33-1 to 10-33-30, inclusive, be repealed.

7 Section 26. The effective date of this Act is January 1, 1999.